

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0021
Responsible Officer
Periods 2000 through 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Withholding Tax: Responsible Officer Liability

Authority: Ind. Code § 6-2.5-9-3; Ind. Code § 6-3-4-8; Ind. Code § 6-8.1-5-1(b); Indiana Department of Revenue v. Safayan, 654 N.E.2nd 270, 273 (Ind.1995).

The taxpayer protests the proposed assessment of responsible officer liability for unpaid sales and withholding taxes.

STATEMENT OF FACTS

Taxpayer was employed by a company ("Company"). On Company's filing of Articles of Incorporation and all subsequent filings with the Indiana Secretary of State's office, Taxpayer was listed as Company's President, and the address for Company was listed as being in care of Taxpayer.

Taxpayer's protest was set for hearing at a designated time by the Department via letter. Neither Taxpayer nor any representative of Taxpayer contacted the hearing officer assigned to the protest. At the time designated for the hearing, Taxpayer neither appeared at the Department's offices nor called the hearing officer responsible for conducting the hearing. Accordingly, this letter is based on information in the Department's file and publicly available information from the Indiana Secretary of State's office.

I. Sales and Withholding Tax: Responsible Officer Liability

DISCUSSION

The proposed sales tax and withholding tax liability was issued under authority of Ind. Code § 6-2.5-9-3 that provides as follows:

An individual who:

(1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
(2) has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department;
holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state. If the individual knowingly fails to collect or remit those taxes to the state, he commits a Class D felony.

The proposed withholding taxes were assessed against taxpayer pursuant to Ind. Code § 6-3-4-8. Also of import is Indiana Department of Revenue v. Safayan, 654 N.E.2nd 270, 273 (Ind.1995), which states “The statutory duty to remit trust taxes falls on any officer or employee who has the authority to see that they are paid.”

Finally, the Indiana Department of Revenue’s “notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid.” Ind. Code § 6-8.1-5-1(b). That statute also states the burden of proof rests with the taxpayer.

Taxpayer argues that he was only an employee of Company, and neither an owner nor officer of Company, at the time of the proposed assessments. However, all filings with the Secretary of State required of Company indicated that Taxpayer was the president of Company. Any filings that may have indicated otherwise are not part of that file. Taxpayer has provided no other substantiation of his arguments.

FINDING

The taxpayer’s protest is denied.